

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

No. CR 04-40016 CW

Plaintiff,

No. C 04-3912 CW

v.

SHARON CAULDER,

ORDER DENYING
PLAINTIFF'S MOTION
TO CORRECT
SENTENCE AND
VACATE/MODIFY
FORFEITURE ORDER

Defendant.

UNITED STATES OF AMERICA,

Plaintiff,

v.

\$185,830.08 IN NET PROCEEDS FROM THE
SALE OF APARTMENT NUMBER D-3 OF THE
PROJECT KNOWN AS "PANILOLO HALE",
SITUATED AT KALUAKOI, ISLAND OF
MOLOKAI, COUNTY OF MAUI, STATE OF
HAWAII,

Defendant.

On May 31, 2006, the Court sentenced Defendant Sharon Caulder
to thirty months imprisonment. In addition, the Court ordered

1 restitution to the bankruptcy trustee and to the IRS and ordered
2 that the restitution be satisfied by the monies held in the
3 forfeiture proceedings. Plaintiff United States moves to correct
4 Defendant's sentence and to vacate/modify the forfeiture order.
5 Defendant opposes the motion. Having considered all of the papers
6 filed by the parties, the Court denies Plaintiff's motion.

7 DISCUSSION

8 Federal Rule of Criminal Procedure 35(a) provides that, within
9 seven days after sentencing, "the court may correct a sentence that
10 resulted from arithmetical, technical, or other clear error."
11 Plaintiff argues that the Court is prohibited from ordering that
12 forfeiture funds be used to satisfy a restitution obligation and
13 thus Defendant's sentence should be corrected and the forfeiture
14 order should be vacated and modified. It cites United States v.
15 Bright, 353 F.3d 1114 (9th Cir. 2004). But Bright does not support
16 Plaintiff's argument. First, Bright interpreted only the Mandatory
17 Victim Restitution Act (MVPA), which is not at issue in this case;
18 this case involves the standard restitution provisions found in the
19 Victim Witness Protection Act (VWPA). The Court has more
20 discretion under the VWPA than under the MVRA. See id. at 1121-23.
21 Second, Bright involved funds that had already been forfeited. As
22 Defendant notes, the funds here have not yet been forfeited, and
23 Defendant was willing to give up her claim to the funds. Most
24 importantly, Bright held only "that the district court was not
25 required to attempt to transfer forfeited funds to Bright's
26 victims." Id. at 1116. Bright did not hold that the court could
27 not exercise its discretion. Here, the Court did exercise its

1 discretion, and there is nothing in Bright to support the
2 government's argument that the Court clearly erred in doing so.

3 Nor do the other two cases cited by Plaintiff support its
4 argument. In King v. United States, 152 F.3d 1200 (9th Cir. 1998),
5 the court held that taxpayers who forfeited revenue from their
6 marijuana operation could not claim loss deduction for the
7 forfeited funds. United States v. A Group of Islands, 185 F. Supp.
8 2d 117 (D. P.R. 2001), is similarly inapposite.

9 Defendant's sentence need not be corrected; there was no clear
10 error.

11 CONCLUSION

12 For the foregoing reasons, the Court DENIES Plaintiff's Motion
13 to Correct Sentence and to Vacate/Modify Forfeiture (Docket Nos.
14 229 (04-40016) and 27 (04-4912)).

15 IT IS SO ORDERED.

16
17 Dated: 6/9/06



18
19 CLAUDIA WILKEN
United States District Judge